

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0716-01
Bill No.: HB 270
Subject: Employees - Employers; Civil Procedure
Type: Original
Date: February 17, 2015

Bill Summary: This proposal changes the laws regarding unlawful employment or discriminatory practices.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
General Revenue	Unknown	Unknown	Unknown
Total Estimated Net Effect on General Revenue	Unknown	Unknown	Unknown

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Conservation Commission Fund	Unknown	Unknown	Unknown
Road Fund	Unknown	Unknown	Unknown
Universities and Colleges	Unknown	Unknown	Unknown
Total Estimated Net Effect on <u>Other</u> State Funds	Unknown	Unknown	Unknown

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 8 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Federal Funds	\$0 or (\$751,750)	\$0 or (\$751,750)	\$0 or (\$751,750)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 or (\$751,750)	\$0 or (\$751,750)	\$0 or (\$751,750)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Total Estimated Net Effect on FTE	0	0	0

☐ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Local Government	Unknown	Unknown	Unknown

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of Administration - Division of General Services** assume this proposal would adjust legal standards which could potentially result in a reduction in the amount of claims successfully made against the State Legal Expense Fund based on violations of the Missouri Human Rights Act. Savings are unknown at this time

Officials from the **Department of Transportation (MoDOT)** assume this proposal revises the Missouri Human Rights Act (MHRA) to make it more comparable to the federal anti-discrimination laws. MoDOT officials assume the proposal adds that a discriminatory motive must be the motivating factor, not just a contributing factor in the decision/action (except in adverse impact cases). The proposal also adds language that courts "shall" consider motions for summary judgment. Within the summary judgment section, direction is given on how evidence will be considered as well as which party carries the burden of proof and how the burden shifts depending on the evidence submitted by the Plaintiff.

MoDOT officials state the changes in the proposal may slow forum shopping, create more consistency in the employment law arena, and should result in a positive economic impact for MoDOT.

Officials from the **Missouri Department of Conservation** indicated an unknown fiscal impact for this proposal but assume it would likely be less than \$100,000. MDC officials noted the amount would be based on legal costs if a claim was brought against the Department for employment actions.

In response to a similar proposal (SB 36) from this year, officials from the **City of Kansas City** assumed the savings to the City from this bill, while difficult to quantify, will be enormous. Currently, the City has been placed in the position where it has to settle many cases that it otherwise would defend through trial, because of the low standard of liability, the reluctance of courts to grant summary judgments in MHRA (Missouri Human Rights Act) cases, and the availability of punitive damages against the City. This bill would allow the City to get summary judgment (or at least have the threat of a summary judgment), avoid punitive damages, and limit actual damages. As an example, in a single case involving two plaintiffs that reached a verdict against the City several years ago, this bill would have resulted in a \$2,000,000 savings in damages (and that assumed the same finding of liability regardless of the change in liability standard and summary judgment potential).

ASSUMPTION (continued)

There could also be a potential cost to the City associated with this bill. Currently, the City has sovereign immunity over allegations of retaliation for whistle blowing, because that is a common law tort. Codification of that common law into the MHRA would make it applicable to the City. That said, the City has had few allegations of retaliation based on whistle blowing activity, and therefore, the City believes its costs will be greatly outweighed by the savings this bill will provide the City.

In response to a similar proposal (SB 36) from this year, officials from the **Missouri State University** stated if enacted, this bill would have a positive fiscal impact on the University. The specific amount and extent of which cannot be determined and quantified at this time.

Oversight assumes although MHRA claims may still be received, the number of claims could potentially decrease and result in a more successful legal defense against such claims based on the new legal standard in this proposal. Since the amount of potential savings resulting from this proposal is unknown (depending on the number of potential claims, the severity of those claims, and the ultimate costs associated with any settlement or judgment resulting from those claims), Oversight will assume a \$0 or Unknown savings to the General Revenue Fund, the Conservation Commission Fund, Road Fund, Colleges and Universities, and Local Governments.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** assumes this proposal amends the Missouri Human Rights Act (the act), changing the standard to prove discrimination [213.010(2)] and setting the standard for analyzing the merits of motions for summary judgment in discrimination law suits [213.080 (1) & (2)].

DOLIR officials state these proposed amendments will impact the Missouri Commission on Human Rights (MCHR's) ability to continue contracting with the Equal Employment Opportunity Commission (EEOC). MCHR's current contract with the EEOC is for \$751,750 which pays for 13 FTE. If MCHR loses its EEOC contract, it would have to lay off those 13 employees.

Contracting with the EEOC to investigate complaints of discrimination is possible because EEOC has determined that the Missouri Human Rights Act is substantially equivalent to the federal civil rights laws they enforce. The funds from this contract make up the largest part of MCHR's budget.

ASSUMPTION (continued)

The EEOC has been provided a copy of HB 270 and has been asked to analyze it to determine whether it would be a barrier to continue contracting to investigate discrimination complaints. The Department of Housing and Urban Development (the other federal agency the MCHR contract with) has also been provided a copy of HB 270 for its review. When their responses are received, copies of those responses will be provided. The current analysis is based on the EEOC's analysis of prior years' bills.

The fiscal impact was calculated by using the current EEOC contract amounts, which total \$751,750 and funds 13 FTE.

Oversight will range the fiscal impact of this proposal from \$0 (does not put Missouri out of compliance) or a loss of \$751,750 (if it is found by the EEOC that MCHR does not conform with the federal anti-discrimination laws EEOC enforces at the administrative level).

Officials from the **Attorney General's Office** assume any potential cost arising from this proposal can be absorbed with existing resources.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration**, the **Office of Administration - Division of Personnel** and the **Office of the State Courts Administrator** each assume the proposal will have no fiscal impact on their respective organizations.

<u>FISCAL IMPACT - State Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
GENERAL REVENUE			
<u>Savings</u> - OA -General Service Legal Expenses	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>

FISCAL IMPACT - State Government
 (continued)

FY 2016
 (10 Mo.)

FY 2017

FY 2018

**CONSERVATION COMMISSION
 FUND**

Savings - MDC
 Legal Expenses

Unknown

Unknown

Unknown

**ESTIMATED NET EFFECT TO THE
 CONSERVATION COMMISSION
 FUND**

Unknown

Unknown

Unknown

ROAD FUND

Savings - MoDOT
 Legal Expenses

Unknown

Unknown

Unknown

**ESTIMATED NET EFFECT TO THE
 ROAD FUND**

Unknown

Unknown

Unknown

UNIVERSITIES AND COLLEGES

Savings - Colleges and Universities
 Legal Expenses

Unknown

Unknown

Unknown

**ESTIMATED NET EFFECT TO
 UNIVERSITIES AND COLLEGES**

Unknown

Unknown

Unknown

FEDERAL FUNDS

Loss - MCHR
 Loss of EEOC federal money

\$0 or
(\$751,750)

\$0 or
(\$751,750)

\$0 or
(\$751,750)

**ESTIMATED NET EFFECT ON
 FEDERAL FUNDS**

\$0 or
(\$751,750)

\$0 or
(\$751,750)

\$0 or
(\$751,750)

<u>FISCAL IMPACT - Local Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
LOCAL POLITICAL SUBDIVISIONS			
<u>Savings - Local Political Subdivisions</u> Legal Expenses	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT TO LOCAL POLITICAL SUBDIVISIONS	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>

FISCAL IMPACT - Small Business

This proposal could have a direct fiscal impact to small businesses to defend against alleged discrimination.

FISCAL DESCRIPTION

This bill specifies that “because” or “because of” means a protected criterion was a motivating factor in a defendant’s unlawful employment or discriminatory practice, but need not have been the only factor in, or reason for, the practice. "Because" or "because of" does not apply to a claim that a defendant’s otherwise neutral policy or practice has a disparate adverse impact on a protected individual or group of individuals.

The bill specifies that when a party files a motion for summary judgment in an employment case, the court must analyze the merits of the motion for summary judgment. When considering a motion for summary judgment where the plaintiff submits direct evidence of discrimination, the burden of proof shifts to the employer to provide evidence that the same employment decision would have occurred regardless of the direct evidence presented by the plaintiff. If the court determines the employer would have taken the same action regardless of the evidence submitted by the plaintiff, the court must rule in favor of the employer.

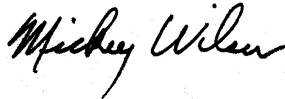
When considering a motion for summary judgment where the plaintiff does not submit direct evidence of discrimination, the burden of proof is on the plaintiff to establish an allegation of discrimination. The employer is allowed to produce evidence of non-discriminatory reasons for the employment decision and if the employer produces evidence of non-discriminatory reasons for the employment decision, the plaintiff must present facts to show the employer’s explanation is insufficient or illegitimate. If the court determines that the employer relied upon non-discriminatory reasons for the employment decision, the court must rule in favor of the employer.

FISCAL DESCRIPTION (continued)

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Labor and Industrial Relations
Attorney General's Office
Office of the State Courts Administrator
Department of Insurance, Financial Institutions and Professional Registration
Office of Administration



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